

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

KRISTOPHER JORDAN KOETTER,

Defendant and Appellant.

D055058

(Super. Ct. No. SCD215120)

APPEAL from a judgment of the Superior Court of San Diego County, David J. Danielsen, Judge. Affirmed.

Kristopher Jordan Koetter pleaded guilty to assault with a semi-automatic firearm (count 1; Pen. Code,<sup>1</sup> § 245, subd. (b)) and he admitted to personally using a firearm under section 12022.5, subdivision (a). In exchange, the court dismissed another count of assault with a semi-automatic firearm and a count of discharging a firearm at an occupied vehicle. The court sentenced Koetter to prison for six years: the lower term of three years for count 1 plus the lower term of three years for the firearm enhancement.

---

<sup>1</sup> All statutory references are to the Penal Code.

Koetter appeals, contending the court abused its discretion by not finding his case "unusual" within the meaning of section 1203, subdivision (e)(2) and California Rules of Court,<sup>2</sup> rule 4.413, subdivision (c), which would have overcome the presumption against granting him probation at sentencing. We affirm the judgment.

### FACTUAL BACKGROUND<sup>3</sup>

On July 23, 2008, Koetter requested the services of Sasha Siganoﬀ, an exotic dancer and professional escort. Siganoﬀ's bodyguard, Ernest Chavez, drove her to Koetter's apartment, parked in front of the complex, and waited in the car while Siganoﬀ went inside. Before performing any services, Siganoﬀ accompanied Koetter across the street to an automated teller machine (ATM). Koetter withdrew \$400 from the ATM, and immediately gave the money to Siganoﬀ in exchange for her anticipated services. As Koetter and Siganoﬀ returned to Koetter's apartment, Siganoﬀ intentionally dropped the \$400 outside Koetter's apartment complex for Chavez to retrieve after she and Koetter went inside.

After returning to Koetter's apartment, Siganoﬀ performed a striptease that lasted approximately 15 minutes. Koetter proceeded to solicit Siganoﬀ for sex. Siganoﬀ refused, stopped the striptease, and prepared to leave Koetter's apartment. At that point, Koetter's neighbor came to his apartment and informed him that a man was standing outside the apartment building. Siganoﬀ said the man was her bodyguard. Koetter

---

<sup>2</sup> All rule references are to the California Rules of Court.

<sup>3</sup> Because appellant pleaded guilty prior to trial, the relevant facts are taken from the preliminary hearing transcript.

became upset, demanded his money back, stated, "nobody messes with [me]" and mentioned possessing a weapon.

Koetter accompanied Siganoﬀ outside his apartment. He then went back inside briefly to "put shoes on." Threatened by Koetter's comments, Siganoﬀ hurried toward the car, got in the passenger's side, and told Chavez to drive off immediately.

Seconds later, Koetter appeared in front of the car with a semi-automatic firearm with a laser pointer. Koetter aimed the firearm at Siganoﬀ and Chavez, demanded his money back, and said, "I'm going to shoot you." Chavez started to drive away and Koetter discharged his firearm six or seven times directly at the car. One of the bullets entered the back windshield and went directly between Siganoﬀ and Chavez. Another bullet went through the left side back seat and a third bullet hit the speedometer. Siganoﬀ and Chavez escaped unharmed and called the police.

## DISCUSSION

I

A

Because Koetter used a deadly weapon in the commission of his crime, the court was required to find him presumptively ineligible for probation absent a finding that his case was "unusual," in that the interests of justice would be served by a grant of

probation. (§ 1203, subd. (e)(2).)<sup>4</sup> The court's ruling on whether a case is "unusual" is subject to an abuse of discretion standard of review. (*People v. Superior Court (Du)* (1992) 5 Cal.App.4th 822, 831.) "Our function is to determine whether the . . . court's order is arbitrary or capricious, or ' "exceeds the bounds of reason, all of the circumstances being considered." ' [Citation.] The burden is on the party attacking the sentence to clearly show that the sentencing decision was irrational or arbitrary. [Citation.] In the absence of such a showing, the trial court is presumed to have acted to achieve legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review." (*Ibid.*)

In determining whether a case is "unusual" for purposes of section 1203, subdivision (e)(2), the court must apply one of the two sets of criteria set forth in rule 4.413(c). The first set of criteria applies when the crime is less serious than crimes in other cases in which the same probation limitation is present, and the defendant has no recent record of committing similar crimes or crimes of violence. (Rule 4.413 (c)(1)(A).) The second set of criteria applies when (1) the defendant participated in the crime under great provocation, coercion or duress and has no record of committing crimes of violence, (2) the crime was committed because of a mental condition and there is a high likelihood the defendant would respond favorably to mental health care and treatment as

---

<sup>4</sup> Section 1203 provides in part: "(e) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any of the following persons: [¶] . . . [¶] (2) Any person who used, or attempted to use, a deadly weapon upon a human being in connection with the perpetration of the crime of which he or she has been convicted."

a condition of probation, or (3) the defendant is "youthful or aged" and has no significant record of prior criminal offenses. (Rule 4.413 (c)( 2)(A)-(C).)

If the court finds the case is "unusual," the presumption of ineligibility is overcome and the court must then decide whether to grant probation using criteria set forth in rule 4.414. (*Du, supra*, 5 Cal.App.4th at p. 830 [rule 414 renumbered to 4.414 eff. Jan. 1, 2007].) These criteria are not exclusive and the court may apply "additional criteria reasonably related to the decision being made." (Rule 4.408(a); *People v. Superior Court (Dorsey)* (1996) 50 Cal.App.4th 1216, 1227.)

## B

Koetter contends his case is "unusual" because his use of a firearm is less serious than the facts typically present when a defendant personally uses a firearm in the commission of an offense. Koetter bases this argument on the surrounding circumstances during the commission of his crime, which he claims caused him great provocation. Koetter cites Siganoff's failure to return his \$400 after refusing to have sex with him. Koetter further asserts Chavez pointed a gun at him before Koetter discharged his firearm. Koetter supports this argument by relying on *Du, supra*, 5 Cal.App.4th 822.

Koetter's arguments are unpersuasive and his reliance on *Du* is misplaced. In *Du*, the appellate court upheld an order granting probation to a defendant convicted of voluntary manslaughter with a firearm, because the defendant was a shopkeeper who lawfully possessed the firearm for protection from ongoing crime by gang members, she had no record of criminal violence, and she acted under circumstances of great provocation. (*Du, supra*, 5 Cal.App.4th at pp. 825-829, 832-833.) In *Du*, the defendant

shot and killed a teenage customer after she struck the defendant in the eye with her fist twice. (*Id.* at pp. 826-827.)

The facts here, viewed with deference to the trial court's decision, do not warrant the same conclusion. Sigano's refusal to commit the crime of prostitution does not render Koetter's provocation adequate or reasonable. Although Koetter attempts to shift the blame to the victims by claiming they were responsible "for creating situations ripe for violence and anger," Koetter initiated the violent situation by requesting sex for money and retrieving his gun once he was displeased with Sigano's services. These factors do not show Koetter's case was "unusual," and thus the court's ruling is well within its discretion.

## II

Koetter further contends the court abused its discretion by denying his request for probation because the seriousness of his crime was mitigated by several factors applicable under rule 4.414. Because Koetter did not overcome the presumption of ineligibility for probation, however, the court was not required to further consider the factors relevant to granting probation.

In any event, the court reviewed all the relevant information provided by the probation officer and the parties, including the letters in support of Koetter and a psychological evaluation. After considering the various rule 4.414 criteria in support of granting or denying probation, the court found the seriousness of the crime outweighed other factors:

"The only concern that I've got and the only circumstance that I think is essential to consider here is the fact that [Koetter] not only shot a firearm but he shot a number of times in the direction of human beings. And, only through . . . sheer luck, he didn't seriously injure or kill someone."

Nothing in the court's decision-making process shows the court misunderstood the scope of its discretion to weigh relevant criteria in deciding to grant or deny probation.

#### DISPOSITION

The judgment is affirmed.

---

McCONNELL, P. J.

WE CONCUR:

---

BENKE, J.

---

IRION, J.